



**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 264-9636  
Fax (978) 264-9630

**Planning Department**

**INTERDEPARTMENTAL COMMUNICATION**

**To:** Planning Board **Date:** November 25, 2009  
**From:** Kristin K. Alexander, AICP, Assistant Town Planner *KKA*  
**Subject:** *Potential Draft Zoning Article - Outdoor Retail Sales*

**BACKGROUND & BYLAW INFORMATION**

During the past year, it has been brought to the Planning Department's attention that the Acton Zoning Bylaw (Bylaw) does not allow outdoor retail sales, service and storage (including tent sales, sidewalk sales, special events, etc.) except for a few specific land uses. Under the Bylaw, the only types of businesses that may conduct outdoor sales, service or storage (for sale) include:

<b><u>Bylaw Section</u></b>	<b><u>Principal Use</u></b>
3.2.1	Agriculture <i>(Also, farm products grown on the premises may be sold on the premises in any zoning district.)</i>
3.5.1	Garden center, florist or commercial greenhouse <i>("may have open-air display of horticultural products")</i>
3.5.5	Restaurant <i>("in an adjacent outdoor space")</i>

There are other uses that by virtue of their Bylaw definitions allow outdoor components as part of their activities:

3.5.11	Animal Boarding
3.5.15	Commercial Recreation
3.5.17	Golf Courses in Residential Districts
3.5.18	Cross Country Skiing in Residential Districts
3.5.19	Vehicle Service Station <i>(but maintenance and service shall be conducted indoors)</i>
3.5.22	Vehicle Sale, Rental

Additionally, the Bylaw allows outdoor storage as an accessory use when the use is located in an Industrial District (Bylaw Section 3.8.2.6). However, in the Industrial District, storage must be completely screened from view from adjacent and nearby streets and properties.

**CURRENT SITUATION**

In reality, outdoor sales (such as sidewalk sales) occur fairly regularly in town. However, by the time the Town of Acton learns of an outdoor sales event, the event is usually over and materials have been removed (e.g. the event occurs over the weekend). For this reason, it has been difficult to enforce restrictions on outdoor retail sales and service.

Some of the pros and cons of outdoor sales, service and storage (for sale) are listed below. In parentheses it is indicated which entity would be most impacted: the Town of Acton or businesses.

### **Pros**

- Clarifies the Bylaw - avoids confusion/misunderstandings. (*Town and Businesses*)
- The Bylaw can establish clear rules for events – helps to ensure public health, safety and welfare and assists with enforcement. (*Town*)
- Provides extra avenues for businesses to promote sales, clear inventory, etc. (*Businesses*)
- Potentially increases the activity and vibrancy of the village and business areas (and possibly resulting in increased revenue). (*Town and Businesses*)

### **Cons**

- Increases the workload for the enforcement officer and possibly Town boards/committees when staff resources are already stretched thin. (*Town*)
- May increase the workload for the businesses in order to comply with the Bylaw; potentially resulting in additional time, effort, cost, etc. (*Businesses*)

### **STAFF RECOMMENDATION**

The Planning Department recommends clarifying the Bylaw to clearly allow outdoor retail sales, service, or storage (for sale). However, these activities should not harm public health, safety, and welfare in any way. If the Bylaw is re-written to clearly allow these activities, criteria/rules would have to be included in the Bylaw that:

- Limit the duration and number of events per business;
- Prohibit obstructions to pedestrian and vehicular travel;
- Ensure the location and accommodations safely support extra products and the anticipated number of customers and vehicles;
- Clearly explain the process for businesses to follow who want to conduct such activities with minimal need for bureaucracy and enforcement.

### **ECONOMIC DEVELOPMENT COMMITTEE (EDC) RECOMMENDATION**

At its 10/15/09 meeting, the EDC recommended changing the Bylaw to allow outdoor sales in certain situations and under certain criteria (such as the criteria listed in staffs' recommendation above). Staff has taken the EDC input and drafted a Bylaw amendment (Attachment 2). The EDC members have been sent the draft amendment, but still need to review and provide comments on the draft amendment at one of its next meetings.

### **QUESTIONS FOR THE PLANNING BOARD**

- Does the Planning Board believe additional outdoor retail sales, services and storage (for sale) should be allowed in the Bylaw in certain situations?
- If so, please review the attached draft Bylaw amendment and consider (a) what additional outdoor sales services, and storage (for sale) activities (if any) should be allowed and when<sup>1</sup>,

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<sup>1</sup> The Bylaw specifically prohibits certain land uses; some that involve outdoor sales, service and storage (e.g. lumber yard) (Bylaw Section 3.7). The list of prohibited uses is attached just for reference (Attachment 1). The Planning Department does not recommend changing the list of prohibited uses.

and (b) if there are any other conditions/criteria that should be met. Provide staff with your comments at the 12/1/09 Planning Board meeting.

### **NEXT STEPS**

- If the Planning Board believes the Bylaw should be changed, the Planning Department will:
  - modify the draft Bylaw amendment based on the Planning Board's and EDC's comments;
  - bring the revised draft Bylaw amendment to the Planning Board and EDC for approval;
  - ask the Board of Selectmen to include a placeholder on the Annual Town Meeting 2010 warrant for the item by 12/31/09.
- If the Planning Board believes the Bylaw should *not* be changed, the Planning Department will bring this information back to the EDC for discussion.

## **ATTACHMENT 1 - FYI**

### **Acton Zoning Bylaw**

- 3.7 Prohibited USES** – All USES that pose a present or potential hazard to human health, safety, welfare, or the environment through the emission of smoke, particulate matter, noise or vibration, or through fire or explosive hazard, or glare are expressly prohibited in all zoning districts. In addition, the following USES are expressly prohibited in all zoning districts.

Aircraft assembly; landing or takeoff of motorized aircraft	Amusement park
Asphalt, block, or concrete plant	Billboard
Bottling plant	Chemical storage and production facility
Commercial extraction of earth products such as sand, gravel, soil, loam, rock, ore, or minerals, except when connected with the construction of BUILDINGS, STREETS, ways or other improvements to land in accordance with applicable laws and regulations.	Commercial or private dump, landfill, refuse incinerator, or other commercial or private solid waste disposal or processing facility
Commercial or private sludge storage or disposal facility	Drive-in or outdoor cinema
Fertilizer plant	Heating fuel sales, service and storage
Manufacture, use, storage, transport or treatment, disposal and/or processing of explosive, toxic or hazardous materials as a principal activity	Lumber Yard
Mobile home; mobile home park; mobile home sales	Meat packing and pet food plants, slaughterhouses
Nuclear power generation	Motor vehicle assembly
Paper or pulp mill	Privately owned cemetery
Radioactive waste disposal or reprocessing of radioactive materials	Refinery
Repair facility for trucks, buses, construction and industrial equipment	Reclamation and Reprocessing of asphalt and/or concrete
Retail Store larger than 60,000 sq. ft.	Sale of heavy vehicles, equipment or buses
Salvage yard and all open air storage of salvage materials and debris	Stadium, coliseum, sports arena, race track
Storage or reprocessing of waste products and salvage materials such as non-operable vehicles or appliances	Storage yard, contractor's yard or other open air establishment for storage, distribution, or sale of materials, merchandise, products or equipment
Tanneries, smelting or rendering plants, gelatin factory	Trailer camp
Truck or trailer cleaning, washing facility or terminal	Water resources development for private commercial sale



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**INTERDEPARTMENTAL COMMUNICATION**

**To:** Economic Development Committee **Date:** November 20, 2009  
**From:** Kristin K. Alexander, AICP, Assistant Town Planner  
**Subject:** *Outdoor Retail Sales, Service and Storage*

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Attached is a draft Acton Zoning Bylaw (Bylaw) amendment to allow outdoor retail sales, service and storage (including tent sales, sidewalk sales, special events, etc.) under certain conditions.

Please note: signage, lighting, and additional structures are all covered by other sections of the Bylaw; and tents already require a Town permit; so I didn't feel the need to address those items in the amendment. In addition, I didn't feel the need to limit the size of the area used for the outdoor displays and sales because I figured between the setback requirements and all the location prohibitions (building entrances, parking spaces, driveways, sidewalks, emergency lanes, service areas, etc.), it naturally limits the area they can conduct these events/activities.

Please review the attached draft amendment and provide the Planning Department ([planning@acton-ma.gov](mailto:planning@acton-ma.gov)) with comments/questions by November 24, 2009. FYI - The Planning Board has not discussed this issue yet. The issue, along with the EDC's initial input and recommendations, will be discussed at the Planning Board's December 1, 2009 meeting. The EDC will be able to provide additional input after the Planning Board meeting at one of the next EDC meetings.

## **ACCESSORY USE permitted in any Zoning District**

Insert new subsection 3.8.3.7 as follows:

- 3.8.3.7 Temporary outdoor displays and sales for Business USES only\*, subject to the following requirements:
- a) The outdoor display and sale of merchandise shall be limited to 28 days per PRINCIPAL USE for each calendar year.
  - b) The outdoor display and sale of merchandise shall be conducted only by a Business PRINCIPAL USE located on the same LOT, and shall only include merchandise that is regularly offered for sale inside that business establishment.
  - c) The outdoor display and sale of merchandise shall be prohibited at any time the Business PRINCIPAL USE is not open for business.
  - d) Outdoor displays and sales shall meet the minimum front, side, and rear yard setback requirements for BUILDINGS and STRUCTURES of the zoning district in which it is located.
  - e) Outdoor displays and sales areas shall not be placed or located so as to interfere with the following: pedestrian or building access or egress; the minimum number of vehicle parking and handicap parking spaces required under this Bylaw and the Massachusetts Architectural Access Board (AAB); ACCESS driveways; interior driveways; maneuvering aisles; loading areas; public or private utilities, services, or drainage systems; fire lanes, alarms, hydrants, or other fire protection equipment; or emergency access or egress.
  - f) Sidewalks shall be continuously maintained to meet minimum Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (AAB) standards.

\* At the 10/15/09 EDC meeting, one committee member stated that he/she wanted to allow outdoor displays, sales and storage for Business uses. Another committee member stated that he/she wanted to allow these events for Retail uses. As I see it, they both have their pros and cons (see directly below). I have drafted the amendment to allow these events for Business uses. If you want me to change the language to allow these events for Retail uses, please let me know.

“Business uses” is a much broader category than “retail uses”; so almost every business would be allowed to conduct these sales except: residential uses (ranging from single family homes to assisted living residences) and industrial uses. The event would also be allowed in any district the business is allowed.

By allowing “Retail uses” to conduct these special events, it prohibits the events from being conducted in the Office zoning districts, Industrial zoning districts, and the Agriculture Recreation Conservation zoning district. It would also prohibit other business uses from having these events. This may be considered acceptable for some uses (e.g. Adult Uses, Vehicle Repair, etc.) but for some uses you might want to allow these events (e.g. Repair Shop, Technical Shop, Studio – this use includes art/artisan's studios).